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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,037	08/28/2002	Kenji Morimoto	MTS-3321US	6565

7590 12/27/2006  
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EXAMINER
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SHIBRU, HELEN

ART UNIT	PAPER NUMBER
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2621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/088,037	<b>Applicant(s)</b> MORIMOTO ET AL.	
	<b>Examiner</b> HELEN SHIBRU	<b>Art Unit</b> 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 14, 15, 18-24 and 27-32 is/are rejected.
- 7) ☒ Claim(s) 6-13, 16, 17, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/12/2002</u> .  | 6) <input type="checkbox"/> Other: _____                          |

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 14-15, 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsumi (US Pat. No. 6,038,094).

Regarding claim 1, Matsumi discloses a data recording apparatus comprising:  
inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20); and

controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Regarding claim 2, Matsumi discloses special-data producing means of, from the data which is received by said inputting means, producing at least one or more kinds of

special-reproduction data (see fig. 4, col. 10 lines 9-19 and lines 55-64, the selector selects Video and Audio data),

said recording means records also the special-reproduction data which is produced by said special-data producing means (see col. 10 lines 20-40), and

said controlling means controls the recording rate in consideration of also an amount of the special-reproduction data which is produced by said special-data producing means (see col. 10 lines 16-19 and lines 37-40, and col. 12 lines 55-67).

Regarding claim 3, Matsumi discloses a data recording apparatus comprising, inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20);

rate information outputting means of outputting information of the rate which is detected by said data rate detecting means (see claim 1 and col. 10 lines 20-40); and

controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Claim 4 is rejected for the same reason as discussed in claim 2 above.

Regarding claim 5, Matsumi discloses there are plural kinds of special-reproduction data (see fig. 1), and

said apparatus further comprises switching means of switching the kinds of special-reproduction data which are produced by said special-data producing means (see fig. 1 unit 31 and rejection of claim 2).

Claim 14 is rejected for the same reason as discussed in claim 1 above.

Regarding claim 15, Matsumi discloses the data which is received by said inputting means is a bit stream configured by a bit stream of a DSS system (see modulator (16) in fig. 1 and col. 7 line 51-col. 8 line 6).

Claims 18-20 are rejected for the same reason as discussed in claims 1-3 above.

Claim 21 is rejected for the same reason as discussed in claim 2 above.

Regarding claim 22, Matsumi discloses the data which is received in said inputting step is a bit stream consisting of a packet signal string configured by a data of a fixed length (see col. 8 lines 29-43), and

in said rate detecting step, the rate is detected by counting a number of the packets constituting the bit stream at intervals of a predetermined fixed time period (see col. 26 lines 55-65).

Claim 23 is rejected for the same reason as discussed in claim 1 above.

Claim 24 is rejected for the same reason as discussed in claim 15 above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumi.

Regarding claims 27, 29-30 and 32, the limitations in claims 27, 29-30 and 32 can be found in claim 1. However claims 27, 29-30 and 32 further require a medium which carries a program for causing a computer to execute steps as claimed in claim 1. Official notice is taken that it is well known in the art to embody inventions in software to be executed by a computer. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teaching of Lane by having a record medium capable of being read by a computer tangibly embodying a program causing the computer to execute the steps of the apparatus claim. The motivation for having a recordable by a computer is that such a method can be easily enhanced and executed multiple times.

Regarding claims 28 and 31, the limitations in claims 28 and 31 can be found in claim 3. However claims 28 and 31 further require a medium which carries a program for causing a computer to execute steps as claimed in claim 3. Official notice is taken that it is well known in the art to embody inventions in software to be executed by a computer. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teaching of Lane by having a record medium capable of being read by a computer tangibly embodying a program causing the computer to execute the steps of the apparatus claim. The motivation for having a recordable by a computer is that such a method can be easily enhanced and executed multiple times.

### *Claim Objections*

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5. Claims 6-13, 16-17, and 25-26 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claims cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

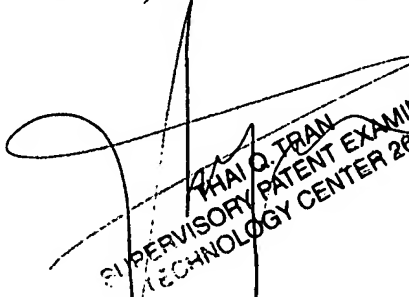
***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571) 272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Helen Shibru

  
THAI Q. TRAN  
SUPERVISORY PATENT EXAMINER  
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